



DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 41

[Docket No. PTO-P-2023-0005]

RIN 0651-AD66

Reducing Patent Fees for Small Entities and Micro Entities Under the Unleashing American Innovators Act of 2022; Correction

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Final rule; correction.

SUMMARY: The United States Patent and Trademark Office (Office or USPTO) makes a correction to a final rule that published on March 22, 2023, amending patent fees for small and micro entities set forth in its regulations to implement the provisions of the Consolidated Appropriations Act, 2023—which included the Unleashing American Innovators Act of 2022 (UAIA). This rule fixes an error in the applicability of certain amendments to international applications under the Patent Cooperation Treaty.

DATES: This correction is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Brendan Hourigan, Director of the Office of Planning and Budget, by telephone at (571) 272-8966; or Dianne Buie, Director, Forecasting and Analysis Division, by telephone at (571) 272-6301.

SUPPLEMENTARY INFORMATION: The Office makes a correction to the final rule that published on March 22, 2023 (88 FR 17147), to clarify that the new fee amounts in 37 CFR 1.445(a)(5) and 1.482 applying to international applications under the Patent Cooperation Treaty (PCT) are implemented as of April 1, 2023, and that the new fee

amounts are not limited to those international applications having a receipt date on or after April 1, 2023. This correction is consistent with the information provided in the **SUPPLEMENTARY INFORMATION** section of the March 22, 2023, final rule on page 17148, in the third column (“The changes to § 1.445(a)(5) and § 1.482 shall take effect on April 1, 2023.”) and is in accord with the PCT and the UAIA.

The applicability portion of the **DATES** section in the March 22, 2023, final rule is corrected to remove the first sentence stating the amendments to 37 CFR 1.445(a)(5) and 1.482 are limited to those international applications having a receipt date on or after April 1, 2023, and to replace it with a sentence indicating that the amendments to 37 CFR 1.445(a)(5) and 1.482 are applicable to international applications under the Patent Cooperation Treaty (PCT) as of April 1, 2023.

Rulemaking Considerations

A. Administrative Procedure Act (APA): This final rule implements a correction to a final rule amending the regulations to implement section 107 of the UAIA on December 29, 2022, which amended 35 U.S.C. 41(h) and section 10(b) of the America Invents Act (AIA), Public Law 112-29, 125 Stat. 284, to require the Office to reduce patent fees for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents by 60 percent for small entities and by 80 percent for micro entities. The change in this final rule implements a correction that involves the rules of agency practice and procedure, and/or interpretive rules. *See Perez v. Mortgage Bankers Ass’n*, 135 S. Ct. 1199, 1204 (2015) (interpretive rules “advise the public of the agency’s construction of the statutes and rules which it administers”) (citations and internal quotation marks omitted); *Nat’l Org. of Veterans’ Advocates v. Sec’y of Veterans Affairs*, 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive); *Bachow Commc’ns Inc. v. FCC*, 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova*

Alexandria Hosp. v. Shalala, 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals are procedural where they do not change the substantive standard for reviewing claims).

Accordingly, prior notice and opportunity for public comment for the changes in this rulemaking are not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. *See Perez*, 135 S. Ct. at 1206 (notice-and-comment procedures are not required when an agency “issue[s] an initial interpretive rule” or when it amends or repeals that interpretive rule); *Cooper Techs. Co. v. Dudas*, 536 F.3d 1330, 1336-37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice-and-comment rulemaking for “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice” (quoting 5 U.S.C. 553(b)(A))).

In addition, the Office finds good cause pursuant to the authority at 5 U.S.C. 553(b)(B) and (d)(3) to dispense with prior notice and opportunity for public comment, and to publish this final rule with an immediate effective date, because such procedures are impracticable and contrary to the public interest. This final rule corrects an error in the March 22, 2023, final rule’s discussion under the **DATES** heading regarding the implementation of the new fees in 37 CFR 1.445(a)(5) and 1.482 that apply to international applications under the Patent Cooperation Treaty (PCT). The March 22, 2023, final rule incorrectly indicated that these new fees apply to international applications under the PCT having a receipt date on or after April 1, 2023. The final rule should have indicated that these new fees are implemented as of April 1, 2023, and that they are not limited to those international applications having a receipt date on or after April 1, 2023. If this correction were delayed to allow for prior notice and opportunity for public comment and a 30-day delay in effective date, it would cause confusion as to when and to which applications the new fees in 37 CFR 1.445(a)(5) and 1.482 apply. Thus, the

USPTO finds good cause to implement this final rule without prior notice and opportunity for comment and with immediate effect.

B. Regulatory Flexibility Act: As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, neither a Regulatory Flexibility Act analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is required. *See* 5 U.S.C. 603.

C. Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be not significant for purposes of E.O. 12866 (Sept. 30, 1993).

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The Office has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, the Office has, to the extent feasible and applicable: (1) made a reasoned determination that the benefits justify the costs of this final rule; (2) tailored this final rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism): This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

F. Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) have substantial direct effects on one or more Indian tribes, (2) impose substantial direct compliance costs on Indian tribal governments, or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

G. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 (May 18, 2001) because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Therefore, a Statement of Energy Effects is not required under Executive Order 13211.

H. Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

I. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

J. Executive Order 12630 (Taking of Private Property): This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

K. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the USPTO will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this rulemaking are not expected to result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based

enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rulemaking is not expected to result in a “major rule” as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995: The changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, of \$100 million (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of \$100 million (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

M. National Environmental Policy Act: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

N. National Technology Transfer and Advancement Act: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

O. Paperwork Reduction Act: This final rule does not involve information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

P. E-Government Act Compliance: The USPTO is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Correction

In FR Doc. 2023-05382, appearing on page 17147 in the Federal Register of Wednesday, March 22, 2023, on page 17147, in the third column, the “*Applicability*” paragraph in the **DATES** section is revised to read as follows:

DATES: * * *

Applicability: The new fee amounts in §§ 1.445(a)(5) and 1.482 applying to international applications under the Patent Cooperation Treaty (PCT) are implemented as of April 1, 2023. The amendments to § 1.18(b)(1) shall apply to those international design applications under the Hague Agreement having a date of international registration on or after May 1, 2023.

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

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